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13 UNITED STATES BANKRUPTCY COURT
 14
 EASTERN DISTRICT OF CALIFORNIA
 15
 FRESNO DIVISION

16 In re

Case No. 17-13797

17 TULARE LOCAL HEALTHCARE
 18 DISTRICT, dba TULARE REGIONAL
 MEDICAL CENTER,

Chapter 9

Adv. Proc. No.: 17-01095-B

19 Debtor.

**ANSWER OF TULARE LOCAL
 HEALTHCARE DISTRICT DBA
 TULARE REGIONAL MEDICAL
 CENTER**

20 Tax ID # 94-6002897
 21 Address: 869 N. Cherry Street
 Tulare, CA 93274

22 HEALTHCARE CONGLOMERATE
 23 ASSOCIATES, LLC,

24 Plaintiff,

25 v.

26 TULARE LOCAL HEALTHCARE
 DISTRICT dba TULARE REGIONAL
 27 MEDICAL CENTER,

28 Defendant.

1 Tulare Local Healthcare District dba Tulare Regional Medical Center ("Defendant") answers
2 the Complaint of Plaintiff Healthcare Conglomerate Associates, LLC ("Plaintiff") by admitting,
3 denying and alleging as follows:

4 1. Answering Paragraph 1, Defendant is without knowledge or information sufficient to
5 form a belief as to the truth of the allegations contained therein, and for such reasons, deny each and
6 every allegation contained within that paragraph.

7 2. Answering Paragraph 2, Defendant admits that it is a local healthcare district in Tulare
8 and that its Bylaws provide that the Board of Directors is to be comprised of five elected directors.

9 3. Answering Paragraph 3, Defendant admits it entered into a Managed Services
10 Agreement ("MSA") with Plaintiff on or about May 29, 2014.

11 4. Answering Paragraph 4, Defendant is without knowledge or information sufficient to
12 form a belief as to the truth of the allegations contained therein, and for such reasons, deny each and
13 every allegation contained within that paragraph.

14 5. Answering Paragraph 5, Defendant admits that Section 11(d) of the MSA contains the
15 quoted language; however, Defendant denies Section 11(d) is enforceable and further denies that
16 venue is proper in Los Angeles County.

17 6. Answering Paragraph 6, Defendant admits that Section 10(e)(ii) of the MSA contains
18 the quoted language; however, Defendant denies Section 10(e)(ii) is enforceable. As to the remaining
19 allegations contained in Paragraph 6, Defendant denies each and every remaining allegation contained
20 therein.

21 7. Answering Paragraph 7, Defendant admits that under the MSA, Plaintiff was to
22 manage and operate Defendant's acute care hospital located in Tulare, California. As to the remaining
23 allegations contained in Paragraph 7, Defendant denies each and every remaining allegation contained
24 therein.

25 8. Answering Paragraph 8, Defendant admits that the hospital was experiencing financial
26 difficulties. As to the remaining allegations contained in Paragraph 8, Defendant denies each and
27 every remaining allegation contained therein.

28 9. Answering Paragraph 9, Defendant admits that it sought voter approval in 2005 for an

1 \$85 million dollar General Obligation bond. As to the remaining allegations contained in Paragraph 9,
2 Defendant denies each and every remaining allegation contained therein.

3 10. Answering Paragraph 10, Defendant denies each and every allegation contained
4 therein.

5 11. Answering Paragraph 11, Defendant denies each and every allegation contained
6 therein.

7 12. Answering Paragraph 12, Defendant admits that the patient census decreased leading
8 up to 2014 and continuing thereafter. As to the remaining allegations contained in Paragraph 12,
9 Defendant denies each and every remaining allegation contained therein.

10 13. Answering Paragraph 13, Defendant is without knowledge or information sufficient to
11 form a belief as to the truth of the allegations contained therein, and for such reasons, deny each and
12 every allegation contained within Paragraph 13.

13 14. Answering Paragraph 14, Defendant is without knowledge or information sufficient to
14 form a belief as to the truth of the allegations contained therein, and for such reasons, deny each and
15 every allegation contained within Paragraph 14.

16 15. Answering Paragraph 15, Defendant admits only that it solicited bids for the
17 management of the District's operations and that HCCA was eventually selected, leading to the
18 execution of the MSA. As to the remaining allegations contained in Paragraph 15, Defendant denies
19 each and every remaining allegation contained therein.

20 16. Answering Paragraph 16, Defendant admits only that the Center for Medicare and
21 Medicaid Services performed a survey of the Hospital. As to the remaining allegations contained in
22 Paragraph 16, Defendant denies each and every remaining allegation contained therein.

23 17. Answering Paragraph 17, Defendant is without knowledge or information sufficient to
24 form a belief as to the truth of the allegations contained therein, and for such reasons, deny each and
25 every allegation contained within Paragraph 17.

26 18. Answering Paragraph 18, Defendant admits that Plaintiff hired most of the hospital's
27 employees. As to the remaining allegations contained in Paragraph 18, Defendant denies each and
28 every remaining allegation contained therein.

1 19. Answering Paragraph 19, Defendant denies each and every allegation contained
2 therein.

3 20. Answering Paragraph 20, Defendant is without knowledge or information sufficient to
4 form a belief as to the truth of the allegations contained therein, and for such reasons, deny each and
5 every allegation contained within Paragraph 20.

6 21. Answering Paragraph 21, Defendant admits what was published in the Fitch
7 Ratings dated August 28, 2014 found at
8 [https://www.businesswire.com/news/home/20140828005950/en/Fitch-Affirms-Tulare-Local-](https://www.businesswire.com/news/home/20140828005950/en/Fitch-Affirms-Tulare-Local-Health-Care-District)
9 [Health-Care-District](https://www.businesswire.com/news/home/20140828005950/en/Fitch-Affirms-Tulare-Local-Health-Care-District). As to the veracity of such published statements, Defendant is without
10 knowledge or information sufficient to form a belief as to the truth of the published statements,
11 and for that reason, deny the veracity of the same.

12 22. Answering Paragraph 22, Defendant admits what was published in the Fitch
13 Ratings dated August 27, 2015 found at
14 [https://www.businesswire.com/news/home/20150827005731/en/Fitch-Upgrades-Tulare-Local-](https://www.businesswire.com/news/home/20150827005731/en/Fitch-Upgrades-Tulare-Local-Health-Care-District)
15 [Health-Care-District](https://www.businesswire.com/news/home/20150827005731/en/Fitch-Upgrades-Tulare-Local-Health-Care-District). As to the veracity of such published statements, Defendant is without
16 knowledge or information sufficient to form a belief as to the truth of the published statements,
17 and for that reason, deny the veracity of the same.

18 23. Answering Paragraph 23, Defendant admits what was published in the Fitch
19 Ratings dated August 23, 2016 found at
20 [https://www.businesswire.com/news/home/20160823006262/en/Fitch-Places-Tulare-Local-](https://www.businesswire.com/news/home/20160823006262/en/Fitch-Places-Tulare-Local-Health-Care-District)
21 [Health-Care-District](https://www.businesswire.com/news/home/20160823006262/en/Fitch-Places-Tulare-Local-Health-Care-District). As to the veracity of such published statements, Defendant is without
22 knowledge or information sufficient to form a belief as to the truth of the published statements,
23 and for that reason, deny the veracity of the same.

24 24. Answering Paragraph 24, Defendant is without knowledge or information sufficient to
25 form a belief as to the truth of the allegations contained therein, and for such reasons, deny each and
26 every allegation contained within Paragraph 24.

27 25. Answering Paragraph 25, Defendant is without knowledge or information sufficient to
28 form a belief as to the truth of the allegations contained therein, and for such reasons, deny each and

1 every allegation contained within Paragraph 25.

2 26. Answering Paragraph 26, Defendant denies each and every allegation contained
3 therein.

4 27. Answering Paragraph 27, Defendant denies each and every allegation contained
5 therein.

6 28. Answering Paragraph 28, Defendant admits the allegations contained therein.

7 29. Answering Paragraph 29, Defendant denies each and every allegation contained
8 therein.

9 30. Answering Paragraph 30, Defendant is without knowledge or information sufficient to
10 form a belief as to the truth of the allegations contained therein, and for such reasons, deny each and
11 every allegation contained within Paragraph 30.

12 31. Answering Paragraph 31, Defendant denies each and every allegation contained
13 therein.

14 32. Answering Paragraph 32, Defendant is without knowledge or information sufficient to
15 form a belief as to the truth of the allegations contained therein, and for such reasons, deny each and
16 every allegation contained within Paragraph 32.

17 33. Answering Paragraph 33, Defendant is without knowledge or information sufficient to
18 form a belief as to the truth of the allegations contained therein, and for such reasons, deny each and
19 every allegation contained within Paragraph 33.

20 34. Answering Paragraph 34, Defendant denies each and every allegation contained
21 therein.

22 35. Answering Paragraph 35, Defendant admits that Section 3(b)(iii) of the MSA includes
23 the quoted language.

24 36. Answering Paragraph 36, Defendant denies each and every allegation contained
25 therein.

26 37. Answering Paragraph 37, Defendant admits that Section 4(b)(iii) of the MSA includes
27 the quoted language. As to the remaining allegations of Paragraph 37, Defendant denies each and
28 every remaining allegations contained in Paragraph 37.

1 38. Answering Paragraph 38, Defendant admits that Section 4(b)(iii) of the MSA includes
2 the quoted language. As to the remaining allegations of Paragraph 38, Defendant denies each and
3 every remaining allegations contained in Paragraph 38.

4 39. Answering Paragraph 39, Defendant denies each and every allegation contained in
5 Paragraph 39 and specifically contends that Plaintiff has repeatedly breached the MSA, thereby
6 causing Defendant significant damages.

7 40. Answering Paragraph 40, Defendant admits that Section 10(a)(iii) of the MSA includes
8 the quoted language.

9 41. Answering Paragraph 41, Defendant admits it received a letter from Plaintiff dated
10 September 15, 2017. As to the remaining allegations of Paragraph 41, Defendant denies each and
11 every remaining allegations contained in Paragraph 41.

12 42. Answering Paragraph 42, Defendant admits that Section 10(b)(ii) of the MSA includes
13 the quoted language.

14 43. Answering Paragraph 43, Defendant denies each and every allegation contained
15 therein.

16 44. Answering Paragraph 44, Defendant denies each and every allegation contained
17 therein.

18 **Second Cause of Action – Declaratory Judgment¹**

19 45. Answering Paragraph 45, Defendant realleges and incorporates by reference each and
20 every response to the allegations set forth in paragraphs 1 through 44 of the Complaint as though the
21 same are fully set forth therein.

22 46. Answering Paragraph 46, Defendant admits that there is a dispute between it and
23 Plaintiff. As to the remaining allegations contained in Paragraph 46, including the substance of the
24 parties' dispute, Defendant denies the allegations contained in Paragraph 46.

25 47. Answering Paragraph 47, Defendant is not in a position to admit or deny what
26

27 ¹ Plaintiff's Complaint does not contain a First Cause of Action, although based on the allegations
28 contained in the Complaint, it appears as if Plaintiff intends to pursue a claim for breach of contract.

1 Plaintiff's contentions are, and based upon that, denies each and every allegation contained in
2 Paragraph 47.

3 48. Answering Paragraph 48, Defendant admits that a judicial determination of the parties'
4 rights and obligations under the MSA is necessary. As to the remaining allegations contained in
5 Paragraph 48, including Plaintiff's contentions, Defendant denies the allegations contained in
6 Paragraph 48.

7 49. Answering Paragraph 49, Defendant denies each and every allegation contained
8 therein.

9 **AFFIRMATIVE DEFENSES**

10 Defendant asserts the following affirmative defenses to the Complaint of Plaintiff.

11 **FIRST AFFIRMATIVE DEFENSE**

12 (Failure To State A Cause Of Action)

13 Defendant alleges that the Complaint, and each cause of action stated therein, fails to allege
14 facts sufficient to constitute a cause of action against Defendant.

15 **SECOND AFFIRMATIVE DEFENSE**

16 (Statute Of Limitations)

17 Defendant alleges that each of the causes of action set forth in the Complaint are barred by the
18 statute of limitations as may be applicable in this case to and including California Code of Civil
19 Procedure Sections 337, 338, 339, 340, 343, among others.

20 **THIRD AFFIRMATIVE DEFENSE**

21 (Comparative Fault)

22 Defendant is informed and believes, and thereon alleges, that any and all damages sustained by
23 Plaintiff, by reason of the conduct, acts, breaches, matters, happenings or events referred to in the
24 Complaint, were directly and proximately caused and/or contributed to by the negligence, carelessness
25 or fault of Plaintiff, and not by any negligence, carelessness or fault on the part of Defendant.

26 **FOURTH AFFIRMATIVE DEFENSE**

27 (Fault Of Third Parties)

28 Defendant is informed and believes, and thereon alleges that any and all damages purported to

1 have been sustained by Plaintiff, by reasons of the conduct, acts, breaches, matters, happenings or
2 events referred to in the Complaint, were directly and proximately caused and/or contributed to by the
3 negligence, conduct, carelessness or fault of third parties, other than Defendant.

4 **FIFTH AFFIRMATIVE DEFENSE**

5 (Failure To Mitigate)

6 Plaintiff has failed to reasonably mitigate their damages, if any. As a result, Plaintiff is barred
7 from recovery on his Complaint.

8 **SIXTH AFFIRMATIVE DEFENSE**

9 (Waiver)

10 As to the cause of action allegedly set forth in the Complaint, Plaintiff waived its right, if any,
11 to assert such a cause of action against Defendant.

12 **SEVENTH AFFIRMATIVE DEFENSE**

13 (Estoppel)

14 Based on the conduct of Plaintiff, and on information and belief, Plaintiff is estopped from
15 asserting any of the alleged causes of action as set forth in the Complaint.

16 **EIGHTH AFFIRMATIVE DEFENSE**

17 (Laches)

18 Plaintiff is barred from maintaining the alleged causes of action by the doctrines of laches,
19 accord and satisfaction.

20 **NINTH AFFIRMATIVE DEFENSE**

21 (Lack of Consideration)

22 As to the causes of action allegedly set forth in the Complaint, Plaintiff is barred from
23 any recovery against Defendant by reason that certain purported agreements, if any, were not
24 supported by consideration.

25 **TENTH AFFIRMATIVE DEFENSE**

26 (Discharge of Obligations/Performance)

27 By satisfying all of the terms, conditions, covenants and requirements of the agreement
28 between Plaintiff and Defendant, Defendant has fully performed its obligations under the terms of the

1 agreement. By virtue of said performance, Defendant have discharged any and all express or implied
2 obligations purportedly owed to Plaintiff by virtue of or pursuant to the agreement.

3 **ELEVENTH AFFIRMATIVE DEFENSE**

4 (Illegal Contract)

5 As to the causes of action allegedly set forth in the Complaint, Plaintiff is barred from any
6 recovery against Defendant by reason that the alleged agreement, if any, is unenforceable as contrary
7 to an express provision of law, public policy or good morals.

8 **TWELFTH AFFIRMATIVE DEFENSE**

9 (Independent, Intervening or Superseding Cause)

10 As to the cause of action allegedly set forth in the Complaint, Plaintiff is barred from any
11 recovery against Defendant by reason of Plaintiff's actions and conduct which constituted an
12 unforeseeable, independent, intervening and/or superseding cause of the damages, if any, which
13 resulted to Plaintiff herein.

14 **THIRTEENTH AFFIRMATIVE DEFENSE**

15 (Unclean Hands)

16 As to the cause of action allegedly set forth in the Complaint, Plaintiff is barred from asserting
17 such causes of action against Defendant by the equitable doctrine of unclean hands on the part of
18 Plaintiff and its agents.

19 **FOURTEENTH AFFIRMATIVE DEFENSE**

20 (No Damage to Plaintiff)

21 The Complaint, and the cause of action allegedly stated therein, is barred because Plaintiff has
22 not suffered any actual damages and merely created all of the damages at issue in the Complaint.

23 **FIFTEENTH AFFIRMATIVE DEFENSE**

24 (Offset)

25 The amount of damages, if any, due from Defendant to Plaintiff must be reduced or offset by
26 the amount of damages owed from Plaintiff to Defendant.

27 **SIXTEENTH AFFIRMATIVE DEFENSE**

28 (Unconscionable Contract)

1 As to the cause of action allegedly set forth in the Complaint, Plaintiff is barred from any
2 recovery against Defendant by reason that the contracts at issue are unconscionable and void based on
3 public policy.

4 **SEVENTEENTH AFFIRMATIVE DEFENSE**

5 (Unconstitutional Clauses)

6 The Complaint, and the causes of action allegedly stated therein, is barred because the
7 provisions contained in the contract violate the California Constitution.

8 **EIGHTEENTH AFFIRMATIVE DEFENSE**

9 (Inadequate Consideration)

10 Defendant is informed and believes and thereon alleges that the consideration for the alleged
11 agreement is inadequate and not fair and reasonable under the circumstances and by virtue thereof,
12 Plaintiff is barred from any recovery herein.

13 **NINETEENTH AFFIRMATIVE DEFENSE**

14 (Reservation of Additional Affirmative Defenses)

15 Defendant presently has insufficient knowledge or information upon which to form a belief
16 whether it may have additional, yet unstated, affirmative defenses. Defendant, therefore, reserves the
17 right to plead any additional further affirmative defenses in the future.

18
19 Dated: January 4, 2018

McCORMICK, BARSTOW, SHEPPARD,
WAYTE & CARRUTH LLP

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21
22 By: 

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Mandy L. Jeffcoach

Nikole E. Cunningham

Attorneys for Tulare Local Healthcare District dba
Tulare Regional Medical Center

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